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Supreme Court No. 84894-7

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Court of Appeals No. 62843-7-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

SCOTT E. STAFNE,

Petitioner

vs.

SONOHOMISH COUNTY AND  
SNOHOMISH COUNTY PLANNING DEPARTMENT

Respondents

REDACTED SUPPLEMENTAL BRIEF

Scott E. Stafne, WSBA No. 6964  
Pro Se

Stafne Law Firm  
239 N. Olympic Avenue  
Arlington, WA 98223  
Phone: 360-403-8700  
Fax: 360-386-4005

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## Statement of Facts

### I. PROCEDURAL HISTORY

A. Introduction. Scott Stafne owns property in the Twin Falls Estates rural settlement (TFE). On behalf of himself and other owners in TFE, Stafne appealed to the Skagit County Superior Court a decision by the Snohomish County Council not to process their request for a change in the County's comprehensive plan and zoning maps. Stafne requested these changes to clarify that previous final administrative land use decisions applicable to TFE confirmed that the character of the land was rural residential rather than commercial forest<sup>1</sup>. Clerk's Papers CP 3-59. As a result of communications with Planning Department staff, Stafne filed this request for clarification with the County Council, as part of the County's annual "docket" of plan amendments. CP 6:1-7:17<sup>2</sup>; 433, paragraph (para) 18, 585-631. Stafne sought to clarify the comprehensive plan designation of all parcels in the rural settlement because some parcels, like Stafne's residence parcel, contained "split designations" of land, some of which were not consistent with TFE status as a rural settlement. *See e.g.* CP 603; 608; 612-619; 647-650. In each of these "split" rural settlement parcels part of the land is shown on the comprehensive plan map as being

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<sup>1</sup> A copy of the motion being appealed can be found at CP 58-9.

<sup>2</sup> The allegations of Stafne's complaint are verified to be true. CP 42-3.

composed of two or more types of the following land classification/designations: Low Density Rural Residential ("LDRR"), Commercial Forest Land (CFL), and Forest Transition Area (FTA). CP 647-650. The County's CFL designation is a natural resource land designation under the County's Growth Management Act, RCW 36.70A.070 (GMA). The County Council considered Stafne's proposed clarification based, in part, on the Planning Department's recommendation, which incorrectly applied a repealed pre-1994 GMA definition of "Forest Land" to parcels which no longer existed in TFE. CP 209-211; RCW 36.70A.030(8). Nonetheless, the Council made a legislative "policy" decision not to place Stafne's proposal on the docket, *i.e.*, not to consider de-designating the FTA and/or CFL portion of the "split designation" parcels, even though the County had administratively approved reconfiguration of TFE into parcels that no longer complied with the size<sup>3</sup> and character requirements of the of Forest Land<sup>4</sup>.

B. The Superior Court Appeal. Following the County Council's refusal to even consider his proposed change, Stafne sought relief from

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<sup>3</sup> Under Snohomish County's Forest Land criteria Forest Land is only composed of land parcels which are greater than 40 acres in size. CP 462 ("...forest tract size is most critical variable affecting forest management costs."); Stafne's Opening Brief in Court of Appeals (OB), 29-30.

<sup>4</sup> See OB, 26-30. See also CP 9:21-21:20:25.

superior court. There is no dispute Stafne amended his petition in October 2008 after he learned about staff's "secret memo" advising the Council to apply a repealed definition of forest land so as to pray for declaratory judgment and writs, as follows: (1) Article IV, Section 6 of the State Constitution (inherent jurisdiction and constitutional writ of certiorari); (2) RCW 7.16.040 (certiorari); (3) RCW 7.16.160 (mandamus); and (4) RCW 7.16.290 (prohibition). CP 21:30-23:5. *See also* 3-42.

In his declaratory judgment action, Stafne sought review to determine the consequences of the earlier, final land use decisions which had legislatively and administratively changed the land within TFE from Forest Land to a rural residential settlement. CP 38:25-39:18.

C. Superior Court Decision. The Superior Court dismissed Stafne's lawsuit under CR 12(b)(1) and (6). The County argued, among other things, that Stafne failed to exhaust administrative remedies by not appealing its legislative action to the Growth Management Hearings Board (GMHB). CP 78-84. In response, Stafne filed a cross motion for partial summary judgment on the declaratory judgment claim related to his residential lot<sup>5</sup>. CP 112-122. In response to the County's motion Stafne

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<sup>5</sup> The Court of Appeals apparently thought Stafne meant to limit his action to only a declaratory judgment involving his own residence. But that was not the case. If Stafne won this motion, he intended to file similar motions for each of the lots with split designations in TFE rural settlement.

argued that appeal to the GMHB was futile and not allowed by the GMHB. CP 258:21-265:17. Stafne also argued the superior court should grant an appropriate writ, *i.e.*, prohibition or mandamus or constitutional writ of certiorari, to require the County Council as part of its docketing process to apply the correct statutory definition of Forest Land to TFE's reconfigured lots. CP 265:19-273:3. The court denied Stafne's cross motion and granted the County's motion to dismiss. CP 235-236.

D. Stafne's Appeal to the Court of Appeals. Stafne appealed to the Court of Appeals with three assignments of error. (OB) 3-5. Stafne argued the superior court should have granted him a judgment declaring the consequences of the 2007 Boundary Line Adjustment, which was a final administrative land use decision reconfiguring his residential parcel into a form which did not meet the GMA's definition of Forest Land or the County's criteria for Forest Land. OB 9:23-33:14. He also argued that he was entitled to a writ requiring the County apply the correct statutory definition of Forest Land to TFE's reconfigured parcels. OB 33:15-49:18.

E. The Court of Appeals Decision. The Court of Appeals first reviewed the County's contention that Stafne's lawsuit must be dismissed for failure to exhaust administrative remedies. *Stafne v Snohomish County*, 156 Wn.App. 667, 682-4, 234 P.3d 225 (2010). The Court agreed with Stafne,

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holding that appeal to the GHMB would be futile and therefore not required. Id. 686-7. Apparently believing the GMA and LUPA provided the only means of judicial relief, the Court of Appeals upheld the superior court's dismissal because Stafne did not file a LUPA petition within 21 days of the legislative decision<sup>6</sup>. Id. Because the Court concluded a LUPA action was available for review of a legislative docketing decision, it ruled that Stafne had an available remedy and was not entitled to any extraordinary writ, Id. 687-8, or declaratory relief. Id. 688 - 689.

It is Stafne's position that the County's previous land use decisions regarding his residence parcel were final administrative decisions that clarified the residential nature of the land and could not be legislatively revisited and nullified. Alternatively, to the extent the County Council could revisit the effect of its earlier final administrative decisions legislatively, Stafne contends the Council was bound to follow the correct GMA statutory definition of "Forest Land," RCW 36.70A.030(8), when deciding whether to de-designate the CFL and FLA land in TFE parcels.

F. What the Court of Appeals Decision did not Decide.

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<sup>6</sup> The Superior Court did not state why it granted the County's motion to dismiss or denied Stafne's motion for summary judgment. CP 235-236. The County and Stafne agreed LUPA did not apply. CP 104:6-22;

Because the Court found Stafne's declaratory judgment and writ claims were not available because LUPA applied to the County's legislative action, this Court will need to revisit these issues if it determines that LUPA and the GMA do not apply to Stafne's appeal.

## II. FACTUAL BACKGROUND

The following presumes familiarity with the detailed description of facts set forth in Stafne's opening and reply briefs to the Court of Appeals, which are incorporated by reference. OB, 1-2, 5-22; Stafne Reply Brief (Reply), 2-6.

After the 2007 BLA, Stafne's residential parcel in TFE consisted of approximately 30 acres which included a waterfall and steep cliffs from part of the DNR land trade (hereafter the "Stafne parcel"). CP 698-725<sup>7</sup>. Since 1995, the County's Future Land Use Map has designated his residence parcel with a "split designation" containing both LDRR and FTA land. CP 603, 648, para 9 F. Stafne and other owners of TFE parcels have participated regularly as citizens in various County public meetings and in meetings with staff, seeking clarity as to why the split designations had not been resolved. *See e.g.* CP 607-610; 612-619. Based on staff

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<sup>7</sup> Page 721 of the final Boundary Line Adjustment maybe helpful to the Court in visualizing the DNR land which was adjusted onto Stafne's parcel. The northernmost gray triangle is that DNR FTA land which was adjusted into Stafne's residence parcel.

recommendations that he file a docketing proposal to clarify the status of his land, Stafne filed a docketing proposal asking the County Council determine that all lands inside Twin Falls rural settlement be classified under the comprehensive plan as LDRR. CP 6:1-7:17, 632-695.

In 1998, as part of the developer's plans to add more property to the Twin Falls Estates rural settlement, Twin Falls, Inc. entered into a land trade with the Department of Natural Resources, involving joint applications to Snohomish County for boundary line adjustments (which were approved and not appealed). CP 430:19-435:5. The trade and adjustments reconfigured the shared property lines so that areas above a high cliff and ridgeline suitable for commercial forestry remained in DNR ownership. CP 647-650. The steep cliffs below the cliff line (which were not suitable for logging, *see e.g.* CP 539, 545 para g) created a buffer between the rural settlement and DNR logging operations. CP 647-650.

In 2004 – 2005, Stafne and another owner of a less than 40 acre parcel in the rural settlement obtained building permits from the County to build rural residences on less than 40 acre lots. CP 648. These building permits were not appealed by the County or anyone else. In 2007, after his house was built, Stafne was granted a boundary line adjustment transferring a water fall and adjacent steep cliffs (which Twin Falls, Inc. had acquired from DNR) into his residential lot, which was never 40 acres

in size. CP 698-724. That boundary line adjustment was approved pursuant to 30.41E SCC, which requires, among other things, that a BLA comply with the comprehensive plan and development regulations. SCC 30.41E.100. This decision was not appealed by the County.

Although the record shows staff was made aware of these changes in parcel configuration to follow steep topography (through their approvals and discussions with Stafne and others, *see e.g.* CP 427-439; 539-550; 558-584; 585-631, 735-779) and although the County issued building permits for residential uses within Twin Falls Estates rural settlement, staff recommended that the County Council not consider Stafne's request to classify all portions of the lots within Twin Falls rural settlement as LDRR. CP 727-734. It is undisputed that this recommendation was based on a repealed, pre-1994 GMA definition of the term "Forest Land". CP 209-11.

The effect of the split designation parcels created by the County's prior unappealed land use decisions and the County's refusal to consider a change as part of its docketing procedure, is that Stafne and other parcel owners in TFE are kept in limbo as to their property rights and applicable policies and regulations affecting their use and enjoyment of their land. *See e.g.* CP 608. Stafne seeks a judicial pathway for determining the present status of his own land and a determination of those standards

which must be applied where a citizen seeks a de-designation of land through Snohomish County's annual docket process.

### Argument

This Court granted review to three of the issues framed in Stafne's Petition for Review, as follows:

1. Did Stafne have right to seek a declaratory judgment pursuant to RCW 7.24.40 in order to have a court perform a judicial inquiry so as to declare the legal consequences of the County's final boundary line adjustments of parcels within TFE?
2. Did LUPA apply to Stafne's attempt to declare the legal consequences of unappealed site specific boundary line decisions?
3. Does the doctrine of laches apply to Stafne's writ claims?

I. BROAD PRINCIPLES AFFECTING REVIEW. This case involves the interpretation of three statutes; namely the Land Use Petition Act (LUPA), RCW 36.70C, the Growth Management Act (GMA), RCW 36.70A, and the Declaratory Judgment Act, RCW 7.24. It is axiomatic that this Court should interpret these statutes in way that does not violate our Constitution's Separation of Powers. *Haynes v Seattle School District*, 111 Wn.App. 250, 254, 758 P.2d 7 (1988); *Household Finance Corp. v Washington*, 40 Wn.2d 451, 455- 458, 244 P.2d 260 (1952).

The Separation of Powers may be violated in two ways.

"One branch may interfere impermissibly with the others performance of its constitutionally assigned function. Alternatively, the doctrine may be violated when one branch

assumes a function that more properly is entrusted to another branch." *INS v Chadha*, 462 U.S. 919, 963, 103 S.Ct. 2764 (1983) (Powell J., concurring (citations omitted)). See also *Hale v Wellpinit School District No. 49*, 165 Wn.2d 494, 504 – 505, 198 P.3d 1021 (2009)

Justice Oliver Wendell Holmes described the difference between judicial power and legislative power in *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 29 S.Ct. 67, 69 (1908). He observed:

"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power.'

'In applying tests to distinguish legislative from judicial powers, courts have recognized that it is the nature of the act performed, rather than the name of the officer, board or agency which performs it that determines its character as judicial or otherwise."

In *INS v Chadha*, the United States Supreme Court stated:

"Whether actions taken by either House are, in law and fact, an exercise of legislative power depends not on their form but upon "whether they contain matter which is properly to be regarded as legislative in its character and effect." 462 U.S. at 962<sup>8</sup>.

Counties have no power to legislate other than that which is bestowed by the legislature or charter. *1000 Friends of Washington v*

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<sup>8</sup> This Court followed the Chadha test for determining whether voting by local officials on land use actions constituted proper "legislative action" in *Mission Springs v Spokane*, 134 Wn.2d 947, 969, 954 P.2d 250 (1998).

*McFarland*, 159 Wn.2d 165, 173, 149 P.3d 616 (2007). Where, as here, there is doubt as to the existence of a state power arguably conferred to a local government, this Court construes the question against local government and against the claimed power. *Biggers v Bainbridge Island*, 162 Wn.2d 683, 699, 169 P.3d 14 (2007); *Spokane v J.R. Distribs, Inc.*, 90 Wn.2d 722, 726 - 727, 585 P.2d 784 (1978).

## II. STAFNE HAD A RIGHT TO OBTAIN DECLARATORY RELIEF.

This Court should be wary of the County's argument that the only way natural resource land can be de-designated is through the exercise of municipal legislative power pursuant to the GMA. Stafne's position on this matter is the state legislature cannot constitutionally give a municipality legislative policy making power to nullify a previously made and judicially reviewable administrative decision applying law to fact.

During the Confederation state legislatures exercised this kind of judicial power. The Separation of Powers was designed to prevent this kind of mischief from recurring.

"The Framers were well acquainted with the danger of subjecting the determination of the rights of one person to the 'tyranny of shifting majorities.' Jefferson observed that members of the General Assembly in his native Virginia had not been prevented from assuming judicial power, and '[they] have accordingly *in many instances decided rights* which should have been left to *judiciary controversy*.' The Federalist No. 48. *supra*, at 336 (emphasis in original) (quoting T. Jefferson, Notes on the State of Virginia 196

(London ed. 1787)). The same concern also was evident in the reports of the Council of the Censors, a body that was charged with determining whether the Pennsylvania Legislature had complied with the State Constitution. The Council found that during this period '[the] constitutional trial by jury had been violated; and powers assumed, which had not been delegated by the Constitution. . . . [Cases] belonging to the judiciary department, frequently [had been] drawn within legislative cognizance and determination." The Federalist No. 48, at 336-337.'

It was to prevent the recurrence of such abuses that the Framers vested the executive, legislative, and judicial powers in separate branches. Their concern that a legislature should not be able unilaterally to impose a substantial deprivation on one person was expressed not only in this general allocation of power, but also in more specific provisions, such as the Bill of Attainder Clause, Art. I, § 9, cl. 3. As the Court recognized in *United States v. Brown*, 381 U.S. 437, 442 (1965), 'the Bill of Attainder Clause was intended not as a narrow, technical . . . prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply -- trial by legislature.'<sup>9</sup> This Clause, and the separation-of-powers doctrine generally, reflect the Framers' concern that trial by a legislature lacks the safeguards necessary to prevent the abuse of power." *INS v Chadha*, 462 U.S. at 962 - 963, 103 S.Ct. 2764 (1983) (Powell J., concurring)

Although Powell's opinion was a concurrence, the majority's only stated objection to his analysis that the legislature had usurped judicial

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<sup>9</sup> CONST. Art I, Sec 23 is similar to the Bill of Attainder in the U.S. Constitution. This Court has indicated the meaning of the two clauses are substantially identical. See *Hale v Wellpinit School District* 49, 165 Wn.2d 494, n. 2, 198 P.3d 1021 (2009)

power was that there was no "final decision" for the judiciary to review. See *INS v Chadha*, at footnote 22. That is not the case here.

The majority's analysis in *INS v Chadha* is also relevant here with regard to the County's purported exercise of legislative "policy" power. The majority finds that a one house veto of a federal administrative agency's decision constituted an invalid legislative act because the federal Constitution requires bicameral action. If the legislative branch cannot give one of its houses the right to "veto" an already made administrative decision, does it make sense that the State legislature can delegate standardless legislative power to a municipal legislature to unilaterally nullify final land use decisions? Cf. *Thornton v. Territory of Washington*, 3 Wash. Terr. 482, 17 P. 896 (1888) (Legislature cannot delegate authority to change state law but can delegate administrative authority.)

In *Hale*, 165 at 494 this Court agreed the legislature can change the interpretation of legislation, but that the legislature could not consistent with the Separation of Powers change the outcome of individual judicial decisions already made. 165 Wn. at 510. Similarly, in *Woods v Kittitas County*, 162 Wn.2d 597, 620-1, 174 P.3d 25 (2007) (a case involving the interactions between an unappealed land use decision and the GMA) this Court noted that "... even if the GMHB were to determine that the comprehensive plan ... is invalid, that determination is prospective in

effect and would not extinguish rights that vested prior to the GMHB's order." Notwithstanding the Separation of Powers the County is asking this Court to let it legislatively revoke the consequences of administrative land decisions that have already been made and not judicially appealed pursuant to LUPA.

In *Woods* this Court specifically held that a final administrative land use decision under LUPA constitutes a conclusive determination that a site specific land use decision complies with applicable development regulations and/or an existing comprehensive plan. *Woods* 162 Wn.2d at 613 - 614. In *Woods* this Court also observed that the principle of finality of land use decisions may result in a situation where an unappealed final land use decision does not comply with a development regulation or comprehensive plan and/or an unappealed comprehensive plan does not comply with the GMA. *Woods*, 162 Wn.2d at 613 - 614. But this noncompliance does not detract from the legal validity of the land use decision if the decision is not appealed. *Id.* This is so even if a mistake has been made. RCW 36.70C.030 and 040. *Habitat Watch v Skagit County*, 155 Wash.2d 397, 410-11, 120 P.3d 56 (2005); *Chelan County v. Nykreim*, 146 Wash.2d 904, 933, 52 P.3d 1 (2002); *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 181, 4 P.3d 123 (2000). A collateral attack on a final land use decision under LUPA is not allowed

even where another statute may also apply. See e.g. *Twin Bridge Marine Park, L.L.C. v. State, Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008); *Samuels Furniture v Department of Ecology*, 147 Wn.2d 440, 448-461, 54 P.3d 1194 (2002); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wash.2d 30, 26 P.3d 241 (2001); *Woods*, 162 Wn.2d at 620-1.

The County's suggestion that further legislation was necessary to change the comprehensive plan (*i.e.* comprehensive map and description of land use classifications) to accommodate the final BLAs within the TFE rural settlement pursuant to RCW 36.70C.020 (1) (a) misses the point. The final decisions conclusively established that the reconfigured lots in TFE, including Stafne's lot, complied with the comprehensive plan. These unappealed rulings were binding on the County and not subject to collateral attack. This is not a case like *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 193 P.3d 1077 (2008) where the County gets to designate on a clean slate. In *Arlington* the issue was solely how the GMA applied to a subsequent legislative policy decision to de-designate Agricultural Land. There this Court held that an earlier legislative decision designating the same land as resource land did not have a collateral estoppel or res judicata effect with regard to a subsequent legislative policy decision to de-designate the same land.

This result was based on the fact the GMA required the GMHB to afford deference to each of the County's legislative policy designation decisions. But here the issue is whether a municipal legislature must give effect to administrative decisions which have already finally and conclusively determined the application of law to fact.

It is significant that the legislature chose LUPA, with its short limitations period, as the statutory mechanism for appealing a municipality's administrative land use decisions. The principles of res judicata and collateral estoppel that did not apply in *City of Arlington* to legislative policy determinations certainly do apply to final administrative land use decisions. RCW 36.70C.030 and .040. *See also, supra*, authority cited at pages 14 - 15.

It must be assumed the legislature was familiar enough with the Separation of Powers to have given courts (a coordinate branch of government), not municipal legislative authorities, the judicial power to resolve the consequences of final land use decisions. Both the language of LUPA and the DJA support this assumption. RCW 36.70C.030(1) makes clear that LUPA replaces the writ of certiorari challenging final land use decisions. Because the legislature could have, but did not, elect to include "declaratory judgments" in its listing of what LUPA replaces, this Court must give effect to the plain meaning of the statute. Similarly, the

legislature could have, but did not, amend the declaratory judgment statute when it adopted LUPA. Thus, the DJA purposes still apply when courts are asked to review the effect of already final and unappealed land use decisions. *See* case authority cited at pp. 14-15.

Stafne was told the County would perform this task. The Council chose not to. Stafne should not be precluded from seeking declaratory relief simply because the County originally pointed him in the wrong direction.

**III. STAFNE SHOULD HAVE BEEN GRANTED A WRIT  
REQUIRING THE COUNTY TO APPLY THE CORRECT LAW.**

Stafne's amended complaint sought writs of mandamus and prohibition. LUPA expressly states that it is not intended to replace these methods of appeal. RCW 36.70C.030(1)(b). The legislative branch does not have the power to restrict judicial review of the arbitrary or capricious or unlawful exercise of municipal legislative power. *Saldin Sec., Inc. v. Snohomish Cnty.*, 134 Wn.2d 288, 292, 949 P.2d 370 (1998). Significantly, the County's response brief in the Court of Appeals never addressed Stafne's arguments that he was entitled to a writ requiring the County to apply the correct statutory definition of Forest Land during its docketing process. OB 30-47. When asked by Judge Schindler during oral argument why Stafne should not be granted a constitutional writ of

certiorari, the County explained that because docketing is a legislative process involving matters of policy it really did not matter what the statute said.

The County's "policy" excuse for refusing to apply the correct law to Stafne's proposal appears to constitute an admission of arbitrary and capricious conduct as "there was no room for two opinions"<sup>10</sup> with regard to 1.) the correct statutory definition of "Forest Land" and 2.) the County Council's responsibility to apply the correct statutory definition to TFE's administratively reconfigured parcels. *City of Arlington*, 164 Wn.2d at 780-791. *See also 1000 Friends of Washington v McFarland*, 159 Wn.2d at 173.

Given the County was bound to give conclusive effect to the final prior land use decisions regarding parcels in TFE under LUPA and to apply the GMA's statutory definition of Forest Land to the reconfigured TFE parcels, there was no policy aspect to the County Council's decision-making. Thus, the Council's decision to deny TFE the benefit of applicable final land use decisions and application of the correct GMA definition of Forest Land was not an appropriate exercise of municipal legislative policy-making power. *See* OB, 37-57. In *Mission Springs v*

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<sup>10</sup> *See Saldin Sec. v Snohomish County*, 134 Wn.2d at 296 for the definition of arbitrary and capricious in a legislative context.

*Spokane*, 134 Wn.2d 947, 969, 954 P.2d 250 (1998) this Court, quoting *INS v Chadha*, supra, held that where all that remained to be done with regard to a land use action was to apply the law, a County's delay in doing so did not constitute legislative action for purposes of obtaining immunity. The same analysis as to whether the Council was acting legislatively appears to also apply here.

IV. LUPA'S LIMITATIONS PERIOD DOES NOT APPLY. In

Stafne relies on the authority set forth in his laches argument for the proposition that LUPA's 21 day limitation does not limit a superior court's writ and declaratory review authority. Additionally, Stafne would note that *Post v. City of Tacoma*, 140 Wn. App. 155, 217 P.3d 1179 (2009) holds that where LUPA does not apply, its limitations period cannot be used to defeat a declaratory judgment.

V. RESPONSE TO COUNTY'S GMA ARGUMENTS. Stafne is comfortable with the analysis set forth by the Court of Appeals with regard to this issue and adopts it as his own. *Stafne*, 156 Wn.App. at 682-4. Additionally, Stafne incorporates the arguments of Snohomish County in its motion to dismiss in *Tartes v Snohomish County*, Skagit County Superior Court No. 08-2-01267-3. CP 313-29. There the County argued the GMHB had no authority to hear an appeal of a denial of a docketing request. CP 318-23.

## CONCLUSION

This Court should hold Stafne had a right to declaratory relief to determine whether any portion of his reconfigured lot constituted Forest Land.

To the extent this Court believes the County's docket process is an appropriate forum to resolve the consequences of final land use decisions, this Court should hold that writ relief is available to require a municipal legislative authority accord final land use decisions a res judicata/collateral estoppel effect with regard to the decision's determinations of compliance with development regulations and a comprehensive plan. Further, this Court should hold that writ relief is available to require a municipal legislative authority apply the correct statutory provisions (or to prohibit application of the wrong statutory provisions) with regard to any docket request to de-designate CFL and/or forest land.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Scott E. Stafne". The signature is stylized with a large, looping initial "S" and a cursive "E".

Scott E. Stafne, WSBA 6964

## OFFICE RECEPTIONIST, CLERK

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**To:** Scott E. Stafne  
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Rec. 4-5-11

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Please find redacted REDACTED SUPPLEMENTAL BRIEF in Stafne v Snohomish County, Supreme Court No. 84894-7. It was served by mail by my office yesterday to opposing counsel. It corrects minor spelling errors.

Thank you.

Scott E. Stafne

Scott E. Stafne  
STAFNE LAW FIRM  
239 North Olympic Ave.  
Arlington, Washington 98223  
360 403 8700 office  
360 300 6005 cell  
360 386 4005 fax

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